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IN THE ESTATE OF YAP HONG KAI, DECEASED; YAP TECK NGIAN (APPLICANT)

HIGH COURT MALAYA, TEMERLOH
RAMLY ALI JC
[PETITION NO: 31-38-1995]
b 2 NOVEMBER 2001

SUCCESSION: *Letters of administration - Revocation of grant - Citation, issuance of - Rules of the High Court 1980, O. 72 rr. 7 & 8 - Grounds for application for revocation of grant - Whether to disclose when applying for*
c *issuance of citation - Caveat - Whether to be entered beforehand - Whether rule on prior entry applies to contentious proceedings - Application for issuance of citation - Whether by summons*

The appellant was granted the letter of administration in relation to his father's estate, *ie*, the deceased. The siblings of the deceased ('the citors') forwarded
d an application to revoke the said grant. They also applied to the senior assistant registrar ('SAR') for a citation under O. 72 r. 7 of the Rules of the High Court 1980 ('the RHC') seeking the appellant to bring the letter of administration granted to him and leave it at the court registry pending determination of their application to revoke the said grant.

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The SAR granted their application and this prompted the appellant's application to the said SAR to set aside and cancel the citation. The SAR dismissed the appellant's application. This was an appeal against the said decision.

In seeking to set aside the citation, the appellant contended that the citors did
f not state the grounds to support their application to revoke the said grant. He also submitted that the issuance of the citation was in breach of the procedures contained in the RHC. He argued that the citors ought to have entered a caveat before issuing a citation. The appellant's contention was that the citation was also defective as the citors did not apply for it by way of summons.

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Held:

[1] A citation is an instrument, signed by the registrar and issued under the seal of the court, reciting that a cause or matter is before the court and the interest of the person extracting the citation and calling upon the
h party cited to enter appearance and, in certain cases, to take some other steps specified therein. (p 258 f)

[2] An application to revoke a grant must be begun by writ. Beforehand, a citation under under O. 72 r. 7 of the RHC must be issued. (p 256 h)

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[2a] This being an application for the issuance of a citation, the full merits of an application to revoke the grant need not be considered at this stage. The citors have done as required by O. 72 r. 8(2) of the RHC in that they have a sworn affidavit verifying the statement of facts to be made in the citation. (p 257 a-b)

[3] The object of a caveat is to prevent the issue of a grant of representation without notice to the person by whom, or on whose behalf, the caveat is entered. In relation to non-contentious probate matters only, O. 71 r. 41(3) of the RHC requires the citor to enter a caveat before a citation is issued. (p 259 c-e)

[3a] The present case involved the citors' intention to revoke the letter of administration granted to the appellant. By virtue of O. 72 r. 1(2) of the RHC, the proceeding was a "probate action" and a contentious probate proceeding as defined thereunder. Therefore, the governing rules would be O. 72 and not O. 71 of the RHC. (p 259 f-g)

[3b] There was nothing under O. 72 which necessitates prior entry of a caveat before the issuance of a citation sought under O. 72 r. 7. (p 260 g)

[3c] Entering a caveat would serve no purpose in the present case in light of the fact that the letter of administration had already been granted to the appellant and the citors had applied to revoke the said grant. (p 261 a)

[4] The citors need not initiate their application for a citation under O. 72 r. 7 of the RHC by summons. The procedures for applying for a citation is provided by O. 72 r. 8(2) of the RHC. (p 262 g)

[4a] Rule 18 to O. 72 of the RHC only applies where there are no other provisions in the RHC which provide otherwise. In addition, it only applies to applications after the probate action has been filed and initiated. This does not include a simple application for the issue of citation under r. 7 of O. 72, which arises at the stage before a writ is filed. Furthermore, the use of the word "may" as opposed to "shall" or "must" in r. 18 denoted that the requirement to commence by summons was not mandatory. (p 263 a-d)

[5] The letter of administration was a court document. Therefore, it was appropriate that the said document be brought back and left at the court registry pending determination of an application to revoke it. This is to avoid an abuse occurring in the event the citors succeed in proving their claims and their application for revocation. (p 263 e-f)

[6] As it was evidenced that the deceased was an undischarged bankrupt, all the assets and liabilities are vested in the Official Assignee. Therefore it would be vital to determine the *locus standi* of the appellant and this would best be decided at the hearing of the citors' application to revoke the grant of the letter of administration. (p 264 b)

[Appeal dismissed with costs.]

Case(s) referred to:

Alloy Automative Sdn Bhd v. Perusahaan Ironfield Sdn Bhd [1986] 1 CLJ 2; [1986] CLJ (Rep) 45

Overseas Investment Pte Ltd, v. Anthony William O'Brien & Anor [1988] 3 MLJ 332

Re Tay Tuan Deceased [1962] MLJ vol XXVIII 285

Legislation referred to:

Probate and Administration Rules 1961, rr. 38(3), 39

Rules of the High Court 1980, O. 1 r. 4(1), O. 32 r. 1, O. 71 rr. 37(1), (3), 41(3), 42(1), (3), 43(1), O. 72 rr. 1(2), 2(1), (3), 5, 7, 8(1), (2), (3), (4), 15(3), 18, O. 93 r. 1(b)

Rules of the Supreme Court 1934, O. 25, O. 26

Rules of the Supreme Court 1965 [UK], O. 76 rr. 4, 7, 8

Other source(s) referred to:

G Raman, *Probate and Administration in Singapore and Malaysia: Law and Practice*, 1991, pp 84-85

Kenneth Sundram, *MLJ Handbook Series "Administration of Estates Handbook"*, p 1[202]

Mahinder Singh Sidhu, *The Law of Wills, Probate, Administration and Succession in Malaysia and Singapore*, p 228

Tristrom and Coote, *Probate Practice*, 23rd, edn, p 540

William, Mortimer & Sunnucks, *Executors, Administrations and Probate*, 17th edn, pp 388, 390, 404

For the appellant - K Maniam; M/s Skrine & Co

For the respondents - Francis Tan; M/s Rosni, Francis Tan & Ho

Reported by M Maheswaran

JUDGMENT

Ramly Ali JC:

This is an appeal to the judge in chambers against the decision of the learned senior assistant registrar (SAR) made on 19 February 2001 in dismissing the appellant's application to set aside and to cancel the citation dated 29 November 2000 issued pursuant to O. 72 rr. 7 and 8 of the Rules of the High Court 1980 (RHC).

For the purpose of this appeal, the appellant, who at the material time, was the administrator of the estate of his late father, one Yap Hong Kai (deceased), is the citee while the respondents who at the material times were the brothers and sisters of the said Yap Hong Kai (deceased), are the citors.

Brief Facts

One Yap Swee King @ Yap Swee Kim @ Yap Swee Keng (YSK) died on 2 October 1964. The appellant's late father, Yap Hong Kai (YHK) and all the citors are children of the said YSK. At the time of YSK's death, the beneficiaries were his wife, one Tan Sok Hun, and all his children (which include YHK and all the citors). On 21 May 1968, the said YHK was granted a letter of administration to administer the estate of the said YSK. However, on 1 November 1993, the said YHK died. The administration of the estate of YSK (where YHK was the administrator) was not fully completed when YHK died. The citors claimed that one of the properties of the said YSK which was not completely administered by YHK at the time of his death was a piece of land held under GM210 Lot 432 Sek. 9, Sungai Ara, Mukim Mentakab, Pahang. The said land was and is still registered under the name of the said YHK as "representative". On 2 February 1996, the appellant was granted a letter of administration to administer the estate of the said YHK. The list of assets or properties of the said estate of YHK as exhibited in the said letter of administration were: (i) land held under GM706 Lot 430 Sek. 9, Sungai Ara, Mukim Mentakab Pahang, and (ii) land held under GM210 Lot 432 Sungai Ara Pahang.

The citors claimed that the said grant of the letter of administration to the appellant was defective on the grounds that:

i. the appellant has failed to inform the court that his late father, YHK was an undischarged bankrupt at his death. An AO and RO to that effect were made against YHK on 30 April 1979;

ii. the appellant has failed to inform the court that the land held under GM706 Lot 430, Sek. 9, Sungai Ara, Mukim Mentakab, Pahang was in fact belonging to the State Government as declared by the High Court in Temerloh on 30 January 1996; and

iii. the appellant has failed to inform the court that the land held under GM210 Lot 432, Sek. 9, Sungai Ara, Mukim Mentakab, Pahang was in fact held by the said YHK, only as "representative" as the administrator of the estate of YSK.

The first citor has applied for a letter of administration 'De Bonis Non' in respect of the unadministered estate of the said YSK *vide* Mahkamah Tinggi Temerloh, Petition No: 31-26-1999 involving the said land held under GM210 Lot 432, Sek. 9, Sungai Ara, Mukim Mentakab, Pahang. The application is still pending. In the meantime, the citors intended to file a writ against the appellant to cancel or revoke the said grant of the letter of administration of the estate of YHK which was granted to the appellant on 2 February 1996. This is to stop the appellant from distributing the said properties among his brothers and sisters (children of the said YHK) and to enable the citors to claim their interest in respect of the said land which they claimed still to be in the estate of YSK which was not administered when YHK died. For that purpose and as a condition precedent before the said writ can be issued, the citors have on 31 October 2000 applied for the issuance of a citation under O. 72 r. 7 and 8 of the RHC 1980. On 29 November 2000 the court has issued the said citation, directing the appellant to bring into and leave at registry of the High Court the said letter of administration for the purpose of the citors' writ for its revocation or cancellation which will be filed and determined later. On 15 December 2000 the appellant filed a summons-in-chambers to set aside or to cancel the said citation. On 19 July 2001, after hearing both sides, the learned SAR dismissed the said application by the appellant with costs. Hence, this appeal.

In coming to the above summary of facts, I have considered all the relevant affidavits filed by both sides, particularly the affidavit dated 31 October 2000 sworn by the citors (encl. 39) and the affidavit dated 2 March 2001 sworn by the appellant (encl. 50) and their respective exhibits attached thereto. In doing so, I am guided by the following decision in *Alloy Automative Sdn Bhd v. Perusahaan Ironfield Sdn Bhd* [1986] 1 CLJ 2; [1986] CLJ (Rep) 45, where the Supreme Court has held:

> There is force in the appellant's contention that an affidavit must reply specifically to allegations, and if it does not, then those allegations not replied to must be taken to have been accepted.

In another case, *Overseas Investment Pte Ltd, v. Anthony William O'Brien & Anor* [1988] 3 MLJ 332, Shanker J has held:

> Where a case is to be decided on a contest of affidavits, the rule is that material allegations which are not contradicted are deemed admitted.

Appellant's Submissions

The appellant's counsel submitted that the said citation issued in favour of the citors' application should be set aside on the grounds that:

i. the citors' complaints did not disclose any grounds or justification to support their application for cancellation or revocation of the said grant of the letter of administration earlier granted to the appellant; and

ii. the citation was applied for and issued not in accordance with the procedure under the RHC 1980, in that the citors have not entered any caveat before issuing the citation and that the citation must be applied by way of a summons.

In respect of ground (i), the appellant submitted that the circumstances under which an action for revocation of grants may be brought are:

i. where it is alleged that the will was not a valid one;

ii. where a later will revoking the earlier will or duly executed revocatory instrument has been discovered;

iii. where it has been discovered that the deceased married since the date of the will which was the subject matter of the grant of probate, or where letters of administration had been granted without the deceased's marriage having been known;

iv. where it is alleged that the grant was obtained by a person or persons not entitled to such a grant.

To support this submission, the appellant's counsel relies on some passages from text books by William, Mortimer and Sunnucks on *Executors, Administrations and Probate*, 17th edn (p. 404) and *Probate and Administration in Singapore and Malaysia: Law and Practice* by G Raman [1991] (p. 82)

The appellant argued that the grounds raised by the citors in the present case cannot be used to support his intended application to cancel or revoke the said grant of the letter of administration.

On ground (ii), the appellant's counsel submitted that the citors' application for a citation was irregular as there was no caveat entered before issuing such citation. To support this submission, the appellant relies on O. 71 r. 41 of the RHC 1980; text books "*The Law of Wills, Probate, Administration and Succession in Malaysia and Singapore*" by Mahinder Singh Sidhu (p. 228): "William, Mortimer and Sunnucks on *Executors, Administrators and Probate*". 7th edn (p. 390); and a case law *Re Tay Tuan Deceased* [1962] MLJ Vol. XXVIII (p. 285). The appellant's counsel also submitted that all applications for citations must be made by summons, as in Form 62. He further submitted that in the present case, the citors have failed to comply with such requirements. To support this submission, the appellant relies on O. 72 r. 7; O. 72 r. 18; and O. 32 r. 1 of the RHC 1980.

Respondents' (Citors') Submissions

The citors' counsel, on the other hand, argued that procedure for revocation of a grant (as in the present case) is provided under O. 72 r. 1(2); 2(1) and 2(3) of the RHC 1980; whereby such an action must be begun by writ and such writ shall not be issued unless a citation under O. 72 r. 7 has been issued. In other words, the present case is only at the stage of issuing a citation, not the hearing of the writ for revocation of the grant yet. Such writ has not been filed yet. The writ will only be filed after citation has been issued by the court. On that premise the citors' counsel argued that the question whether the citors' have disclosed any ground or justification to support their application for revocation of the grant does not arise at this stage. The issue is only material and relevant at the hearing of the writ proper, not at the present stage of issuing a citation. At this stage, the relevant issue is whether the said citation was validly issued in accordance with the relevant rules.

On the question of caveat, the citors' counsel argued that since the application for citation was made under O. 72 r. 7 and 8 of the RHC 1980, being a contentious probate proceeding, it does not require a caveat to be entered before issuing a citation. He further argued that such a requirement for caveat is only relevant and applicable for application for a citation under O. 71 ie, for non-contentious probate proceeding before a grant of a letter of administration is given out to any party.

Issues

The following issues need to be determined by the court, namely

i. whether the citors need to disclose grounds or justification to support their application for revocation of the said grant of the letter of administration, at this stage of the proceedings ie, at the stage of issuing a citation;

ii. whether a caveat need to be entered before issuing a citation in the present case; and

iii. whether an application for the issuance of a citation (as in the present case) must be made by a summons.

First Issues: Grounds For Revocation Of The Grant

The first issue relates more to the merit of the application by the citors to revoke the said grant. This application, which must be begun by writ, has not be filed yet. Before this writ can be issued, a citation under O. 72 r. 7 of the RHC 1980 must have been issued first. One must appreciate the difference between these two actions; (i) an action to revoke the grant; and (ii) an application for issuing a citation, which is a precondition to the issue of the first action. The present case before this court is in respect of the application

for issuing of a citation. Therefore, I am of the view that the court need not consider the full merits of the application to revoke the said grant at the present stage of issuing a citation. There will be a separate hearing and consideration for the merits when the writ is filed and fixed for hearing at a later stage.

What the citors need to do at this stage of the proceeding is to file an affidavit sworn by the person applying for a citation to be issued (the citor) verifying the statements of facts to be made in the citation, as required under O. 72 r. 8(2) of the RHC 1980. To that effect the citors have sworn an affidavit dated 31 October 2000 (encl. 39) to support their applications for a citation under O. 72 rr. 7 and 8 of the RHC 1980 (encl. 38). Basically, the said affidavit contains the averment that:

i. the said land held under GM210 Lot 432, Sek. 9, Sungai Ara, Mukim Mentakab, Pahang, was and is still a property belonging to the estate of YSK, not the estate of YHK;

ii. the said land held under GM706 Lot 430, Sek. 9, Sungai Ara, Mukim Mentakab, Pahang was and is still belonging to the State Government, not the estate of YHK;

iii. the said YHK, at the time of his death, was an undischarged bankrupt;

iv. that the first citor has applied for a letter of administration 'De Bonis Non' in respect of the unadministered estate of the said YSK *vide* Mahkamah Tinggi Temerloh, Petition No: 31-26-1999;

v. that citors intend to file a writ against the appellant to revoke the said grant of a letter of administration earlier granted to him on 2 February 1996; and

vi. the citation is to direct the appellant to bring into and leave at the registry the letter of administration earlier granted to the appellant.

I have scrutinised the content of the citors affidavit (encl. 39) and am satisfied that it contains all the relevant and material facts that need to support an application for a citation at this stage. Therefore, it is not appropriate for me to consider the full details of the merit of the writ which is yet to be filed, at the present stage.

Second Issue: On Caveat

In order to determine whether a caveat need to be entered before a citation is issued, we need to consider the relevant rules and laws relating to the issuance. At the present time the relevant rules relating to the matter are to be found

in the RHC 1980, particularly O. 71 and O. 72. Originally, the relevant rules were provided under the Rules of the Supreme Court 1934 (O. 25 and 26). However, with effect from 15 February 1962, the said rules were replaced by the Probate and Administration Rules 1961 (Rules 38 and 39). The said Probate and Administration Rules 1961 were repealed *vide* PU(A)50/80, – ie, by O. 93 r. 1(b), of the present Rules of the High Court 1980 when they came into force in 1980. The relevant provisions of O. 72 rr. 7 and 8 in our present RHC 1980 follow the provisions of O. 76 rr. 7 and 8 of the English Rules of the Supreme Court 1965. However, in 1980, O. 76 rr. 7 and 8 of the English Rules of the Supreme Court 1965 had been amended and substituted with O. 76 r. 4. There was no corresponding amendment to our relevant provisions of the RHC 1980. Therefore, any reference made to the English Law relating to the same matter after 1980, may not be applicable to our present position.

Order 71 of the RHC 1980 provides for procedures relating to non-contentious probate proceeding, while O. 72 of the RHC 1980 provides for procedures relating to contentious probate proceeding. For the purpose of the RHC 1980 "probate proceedings" include proceedings in probate (where a will is involved) as well as proceedings for letters of administration (where no will is involved).

Order 1 r. 4(1) of the RHC 1980 provides "probate action" and has the meaning assigned to it by O. 72. Order 72 r. 1(2) provides:

> (2) In these rules 'probate action' means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious.

A citation is an instrument, signed by a registrar (SAR) and issued under seal of the court, reciting that a cause or matter is before the court and the interest of the person extracting the citation and calling upon the party cited to enter an appearance and, in certain cases, to take some other steps therein specified. (See: William Mortimer and Sunnucks on *Executors, Administrators and Probate*, 17th edn (at p. 388)).

For non-contentious probate proceedings under O. 71 of the RHC 1980, citation may arise in three circumstances, namely:

i. citation to accept or refuse to take a grant (O. 71 r. 42(1)) ie, where a person who has a prior right to grant a probate or administration delays or declines to take it, but will not renounce his right, he may be cited by a person having a right which is inferior to his, to accept or refuse the grant.

ii. citation to take a probate (O. 71 r. 42(3)) – ie, where an executor has intermeddled in the estate of the deceased and has not taken the grant interim six months of death, he may be cited to take probate by any person interested in the estate, unless proceedings as to the validity of the will is pending;

iii. citation to propound a will (O. 71 r. 43(1)) – ie, where a person genuinely believes that a will which has not been proved, is invalid, and he himself is interested under an earlier will or an intestacy, he may cite the executors and beneficiaries to propound it. (see: *Probate and Administration in Singapore and Malaysia: Law and Practice* by G Raman (at p. 84-85)).

In citations in non-contentious probate matters under O. 71 of the RHC 1980 the citor must enter a caveat before the issue of the citations (O. 71 r. 41(3) of the RHC 1980 clearly provides for this requirement). (See also: Tristrom and Coote's *Probate Practice*, 23rd edn at p. 540). Thus in that circumstances, a citation cannot be issued unless and until the citor has entered a caveat. However, it must be stressed that this requirement under O. 71 r. 41(3) of the RHC 1980 is only for non-contentious probate proceedings under O. 71. The provisions relating to caveat are to be found under O. 71 r. 37 of the RHC 1980. Order 71 r. 37(1) & (3) provides that "any person who wishes to ensure that no grant is made without notice to himself may enter a caveat," by filing the Caveat Form 173 in the registry. It is a notice in writing (Form 173) lodged at the registry of the High Court. The object of a caveat is to prevent the issue of grant of representation without notice to the person by whom, or on whose behalf, the caveat is entered.

The present case involves the citors' intended application by writ to revoke the grant of the letter of administration in respect of the estate of YHK which was granted to the appellant on 2 February 1996. By virtue of the definition of the words "probate action" under O. 72 r. 1(2) of the RHC 1980 (which has been cited earlier), that proceeding is a probate action. It is a contentious probate proceeding as defined thereunder. Therefore, for the purpose of the present proceedings, the applicable rules are O. 72, not O. 71 of the RHC 1980. A probate action under O. 72 must be begun by writ and the writ must be issued out of the registry (O. 72 r. 2(1). The citors' application for citation (encl. 38) clearly indicates that the application was made under O. 72 rr. 7 & 8 of the RHC 1980.

For contentious probate proceedings under O. 72, of the RHC 1980, citation may arise in two circumstances, namely:

i. citation to see proceedings (O. 72 r. 5) – ie, a citation issued, on the application of the plaintiff or any other person who has pleaded in a

probate action, against any person not a party to the action who has an adverse interest to the applicant notifying him that if he does not enter an appearance in the action judgment may be given therein without further notice to him; and

ii. citation to bring in grant (O. 72 r. 7) – ie, where, in an action for the revocation of the grant of probate of the will, or letters of administration, person to whom a probate or letter of administration was granted, requiring him to bring into and leave at the registry the probate or letter of administration.

The present case involves an application by the citors for a citation under O. 72 r. 7, ie, citation to bring in and to leave at the registry the letter of administration earlier granted to the appellant pending determination of the citors' application by way of writ to revoke the said letter of administration.

Order 72 r. 7 of the RHC 1980 provides:

> In actions for a revocation of the grant of probate of the will, or letters of administration of the estate of a deceased person, a citation against the person to whom the probate or letters of administration as the case may be, was or were granted requiring him to bring into and leave at the Registry the probate or letters of administration, as the case may be, may be issued on the application of the plaintiff.

Order 72 r. 8(1) provides that "a citation under r. 5 or 7 must be issued out of the Registry and must be settled by the court before it is issued'. Order 72 r. 8(2) provides that "before such a citation is issued an affidavit verifying the statements of fact to be made in the citation must be sworn by the person applying for it to be issued: Provided that the court may in special circumstances allow the affidavit to be sworn by that person's solicitor."

Order 72 r. 8(3), further provides that "issue of a citation takes place upon writs being sealed by an officer of the registry." Unlike O. 71, there is nothing under O. 72 which mentions about caveat and the requirement that a caveat must first be entered before a citation can be issued. Therefore I am of the view that for a citation under O. 72, particularly r. 7 thereof, the prior entry of a caveat, as applicable under O. 71 for non-contentious probate proceedings, is not required. It is not a pre-condition to the issue of a citation under O. 72 r. 7 or the RHC 1980. It is only logical that since the object of a caveat is to prevent the issue of a grant of representation without notice to the person who has entered it, it is applicable only in fresh applications for the grant of

the representation, but not after the grant. The caveat served no purpose at all in the present case, where a letter of administration has already been granted to the appellant on 2 February 1996 and the citors' intended application is to revoke the said grant. In *MLJ Handbook Series "Administration of Estates Handbook"* - Advisory Editor Kenneth Sundram, (at p. 1[202]), it is stated that:

> Once representation has been granted to any petitioner and extracted, a caveat cannot be entered to stop any proceedings relating to the estate. In such a situation, the proceedings can only be stopped by revoking the grant of representation.

It is clearly not the intention of the Rules Committee to impose on the requirement that a caveat must first be entered before a citation is issued under O. 72 r. 7 of the RHC 1980. Otherwise a similar provision as that of O. 71 r. 41(3) of the RHC 1980, for a caveat to be entered before issuing a citation, must have been included somewhere in O. 72.

The appellant's counsel cited the case of *Re Tay Tuan Decd* [1962] MLJ vol XXVIII to support his argument that a caveat need to be entered before issuing a citation in the present case.

Re Tay Tuan Decd (supra) was decided by Adams J in Muar High Court on 20 June 1962. In that case, Adams J held (in delivering oral judgment) that:

> The preliminary steps to be taken by a party who desires to obtain the revocation of a grant of letters of administration are: (1) enter a caveat; (2) follow it with an extraction of a citation to the administrator to bring the grant to the Registry. This should be followed by the issue of an originating motion.

In that case, a petition for a letter of administration was filed in 1951 *vide* petition for LA No: 98 of 1951. A letter of administration was granted in 1952. The decision of the court in dismissing the motion to revoke the grant was made on 20 June 1962. At that material times when the decision was made, the relevant rules relating to the matter were found in the Probate and Administration Rules 1961 (particularly rr. 38 and 39) which came into effect on 15 February 1962. The said rules were repealed and substituted by the Rules of the High Court 1980 since 1980 until today. The issue in question is purely a procedural matter, not a substantive matter. Therefore, the procedural laws and rules applicable in a particular case depends on the existing laws and rules applicable at the particular time when the case comes up. Rule 38(3) of the Probate and Administration Rules 1961 clearly indicates that "the citor shall enter a caveat before issuing a citation". This requirement is in *pari materia* with O. 71 r. 41(3) of the present RHC 1980 (in relation

to non-contentious probate proceedings). However there is no corresponding separate provisions for non-contentious and contentious probate proceedings on the 1961 Rules as what we have in the present O. 71 and O. 72 of the RHC 1980. In the present RHC 1980 procedures for non-contentious and contentious probate proceedings are separated and differentiated - for non-contentious proceedings the procedures are under O. 71 while for contentious proceedings the procedures are under O. 72. Under O. 72 of the present RHC 1980, there is no mention about caveat and thus no requirement that caveat must first be entered before a citation can be issued. That provisions and requirement are only to be found in O. 71, but not O. 72. Therefore, I am of the view that the decision of Adams J in *Re Tay Tuan Decd (supra)* may not be applicable to the present case on the ground that, that case was dealing with a totally different set of applicable laws (at that time) compared to the present O. 72 of the RHC 1980.

Third Issue: Application For Citation By Summons

The appellant's counsel also submitted that the citors' application for a citation was bad and invalid. He argued that a citation may be issued under O. 72 r. 7 on application of the citors. There must be a form of application. He further argued that under r. 18 of the same O. 72, except where these rules otherwise provide, any application to the court in a probate cause or matter may be made by summons. He also argued that under O. 32 r. 1 of the RHC 1980, every application in chambers must be made by summons in Form 62. Therefore, the counsel concluded that the citors should have initiated their application for a citation under O. 71 r. 7 of the RHC 1980 by way of a summons as in Form 62. He contended that the citors have failed to do so and that amounts to irregularity which cannot be cured and thus, the said citation proceeding was a nullify. The citors' counsel, on the other hand, argued that O. 72 r. 18 of the RHC 1980 is only applicable after a writ to revoke the grant has been filed in court. In the present case, the counsel argued that the writ in question has not been filed yet.

I am of the view that the citors need not initiate their application for a citation under O. 72 r. 7 by summons as provided under r. 18 of the same order. Firstly, r. 18 is applicable only if there is no other provisions in the rules which provide otherwise. The procedures for applying for a citation is under O. 72 r. 8. Rule 8(2) provides that before such a citation is issued an affidavit verifying the statement of fact to be made in the citation must be sworn by the person applying for it to be issued: Provided that the court may in special

circumstances allow the affidavit to be sworn by that person's solicitor. There is no mention that the application under r. 7 must be made by summons, as being provided for an application for discontinuance of a probate action under r. 15(3) of the same order. Further more, I am also of the view that the requirement under r. 18 is not mandatory. The rule uses the word "may" instead of "shall" or "must". If it is meant to be mandatory, the word "shall" or 'must' should have been used instead, as being used in O. 72 r. 2(1) and O. 32 r. 1 of the RHC 1980. I am also in agreement with the citors' counsel that r. 18 is only applicable to all applications after probate action has been filed and initiated. Rule 18 refers to any application to the court in a "probate cause or matters," "Probate cause" must be referring to "probate action" as defined under O. 72 r. 1(2) which means an action for the grant of probate or letters of administration; or for revocation of such grant or for a decree pronouncing for or against the validity of an alleged will. That being the case, it does not include a simple application for the issue of a citation under r. 7 of the same order, which arises at the stage before a writ is filed.

The said application may be made *ex parte*. It is only for the issuance of a citation and the issue of a citation takes place upon it being sealed by an officer of the registry. However, O. 72 r. 8(4) provides that a citation under r. 5 or 7 must be served personally on the person cited. This has been done by the citors. The said citation requires the appellant to bring into and leave at the registry the letter of administration within eight days from the date when the citation was served on the appellant. The letter of administration is a document issued by the court upon application by the appellant as a petitioner. It is a court document. Therefore, it is only appropriate that the court requires the said letter of administration be brought back and left at the court registry pending determination of an application to revoke the said letter of administration to be filed by way of a writ by the citors. This is to avoid abuse in the event the citors manage to prove their claims and are successful in their application to revoke it. The citors have shown, through their affidavit, that they are interested parties in the sense that they are the rightful beneficiaries to the estate of YSK which they claimed to be left unadministered by the said YHK. One of them has applied for a letter of administration 'De Bonis Non' in respect of that unadministered estate of YSK.

Their next step after that is to claim the said property from the administrator of the estate of said YHK, for proper distribution among the beneficiaries of the said YSK. Therefore, the legality of the status of the appellant as an administrator of the estate of YHK must be confirmed and determined first. The citors' intended action to revoke the said grant of the letter of administration as well as the issue of a citation under O. 72 r. 7 is material and relevant towards that end.

There is also evidence in the citors' affidavit which shows that at the time of his death on 1 November 1993, the said YHK was an undischarged bankrupt. A letter dated 6 June 2000 from the Official Assignee's office (exh. H to encl. 39) confirmed that AO and RO had been issued against him on 30 April 1979 on the petition by Borneo Sumatra Trading Co.

By virtue of that, all assets and liabilities of the bankrupt are vested with the Official Assignee. Only the Official Assignee has the *locus standi* to deal with any matter relating to his assets and liabilities. No one else can do it without the consent of the Official Assignee.

Therefore, it is very vital to determine the *locus standi* of the appellant in this matter. That determination is best to be decided in all action by the citors to revoke the said grant of the letter of administration.

Conclusion

Having given this matter careful consideration, I am convinced that the learned SAR was right in dismissing the appellant's application (as in encl. 42) to set aside the citation with costs. Therefore, I have no hesitation to dismiss this appeal with costs.